

Management report to Council

Agenda item 3.1

Amended delegation policies to respond to emergencies and/or extraordinary circumstances

Council

Presenter: Keith Williamson, General Manager Governance and Organisational Development **17 March 2020**

Purpose and background

1. To update Council's General Delegation Policy and Delegation Policy for Planning Applications to authorise the suspension of specific clauses in the event of an emergency and/or extraordinary circumstances.
2. In light of recent developments with COVID-19, these changes are necessary if the majority of Council or special committee members cannot form a quorum due to illness or the need to self-isolate. These changes will allow delegates of Council (the administration) to make decisions if the need arises.

Key issues

3. Under the *Local Government Act 1989* (the Act), Councillors must observe a number of statutory requirements when voting at Council and special committee meetings (s90). Although not defined in the Act, previous guidance issued by Local Government Victoria has indicated that 'present at the meeting' ordinarily means present in the room in which the meeting is taking place. In other words, a quorum can only be formed if Council or special committee members are physically present.
4. Melbourne City Council has written to the Minister for Local Government, Adem Somyurek, requesting he urgently consider the means by which members of Council and special committee meetings can meet virtually (by teleconference or other), to address the potential issue and any future circumstances.
5. Furthermore, the Local Government Bill 2019 currently before Parliament does not appear to remove the limitations of physical attendance at meetings.
6. It is proposed the clauses in Council's General Delegations Policy and Delegation Policy for Planning Applications may be suspended by resolution of Council, or where a quorum cannot be formed, by agreement of both the Lord Mayor and Chief Executive Officer.
7. In the interests of transparency, Council will make available (where practicable) on its website, a list of decisions that would have been dealt with by Council or special committee, but were made under delegation due to an emergency and/or extraordinary circumstances.

Recommendation from management

8. That Council:
 - 8.1. Amends the Council's General Delegations Policy in accordance with the changes identified in Attachment 2.
 - 8.2. Amends the Council's Delegation Policy for Planning Applications in accordance with the changes identified in Attachment 3.
 - 8.3. Notes the changes will come into effect directly following the passing of the resolution by Council.
 - 8.4. Notes Council will make available (where practicable) on its website, a list of decisions that would have been dealt with by Council or special committee, but were made under delegation due to an emergency and/or extraordinary circumstances.

Attachments:

1. Supporting Attachment (Page 2 of 8)
2. General Delegations Policy (Page 3 of 8)
3. Planning Delegations Policy (Page 6 of 8)

Supporting Attachment

Legal

1. The report accurately identified the relevant legal issues.

Finance

2. There are no financial implications arising from the recommendation contained in this management report.

Conflict of interest

3. No member of Council staff, or other person engaged under a contract, involved in advising on or preparing this report has declared a direct or indirect interest in relation to the matter of the report.

Health and Safety

4. In developing this proposal, consideration has been given to the potential of loss of quorum due to the impact of Novel Coronavirus (COVID-19).

Stakeholder consultation

5. The process is internal and external stakeholder consultation is not appropriate.

Environmental sustainability

6. The report relates to administrative processes only and no environmental issues or opportunities have been identified.

The objective of this delegation policy is to achieve the best possible results for the City, Council and the community through the effective harnessing of the input of, and co-operation between, Council, the administration and the community.

Council therefore re-affirms its responsibility, in consultation with the community, for setting and owning:

- the vision for the City
- its strategic direction
- the policies necessary to pursue that vision and direction
- the funding for them.

Council also accepts its responsibility to be accountable to the community for the outcomes of its policies.

Council acknowledges the responsibility of the administration:

- to implement the vision, strategies, direction and policies determined by Council
- to provide to the Council all information relevant to issues affecting it
- to advise honestly, loyally and professionally upon those issues
- to provide effective administration and staffing for these purposes, within the framework of Council's budget
- to be accountable to Council for the outcome achieved.

The Council therefore adopts the following policies and processes in relation to the exercise of delegated authority:

1. Referral to Council

A delegate shall refer any proposal whether for a project or program, for work, for a contract, or for a planning decision, to Council or its appropriate Committee, without prior decision by the delegate wherever and whenever:

- the proposal raises an issue of significant public interest, concern or controversy, or is likely to do so
- the proposal raises an issue of policy or process not covered by existing policy or practice
- the proposal has given rise to substantial public objection or appears likely to do so
- the delegate recommends approval of the proposal, but such approval would be, or could reasonably appear to be, inconsistent with a previous decision or decisions by or on behalf of the Council
- implementation of the proposal would require expenditure of Council funds, and such funds have not been specifically provided for in the budget
- the delegate is not satisfied that the proposal has been the subject of appropriate consultation with those likely to be interested in or affected by it

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- the delegate is not satisfied that the proposal is one that is appropriate for the decision of the administration rather than the Council
- the delegate believes that it is more appropriate that the proposal or any issue arising in connection with it should be determined by the Council rather than the administration
- any Councillor has indicated a desire to call in the proposal for Council decision.

2. Limitation on Financial Delegations

Where the approval of a proposal would involve the expenditure of Council funds for which provision has been made in Council's budget, the authority of the delegate is nevertheless limited to the following amounts:

For the Chief Executive Officer	\$2 million
For General Managers (or equivalent), in charge of a division	\$1 million
For Directors (or equivalent), in charge of a branch	\$500,000

3. Difficult Issues

Whenever a major issue arises or any difficulty repeatedly arises in relation to the exercise of delegated authority, that issue or difficulty shall be referred to the appropriate Council Committee for consideration.

4. Compliance with Policy

When exercising delegated authority the delegate shall use his or her best judgement to ensure compliance with each and all of the requirements of this resolution.

5. Emergency and/or Extraordinary Circumstances

As identified from time to time by resolution of Council, compliance with sections 1, 3 and 4 of this policy will be suspended where emergency and/or extraordinary circumstances arise (such as a state emergency being declared). Section 2 will continue to apply for General Managers and Directors however, the expenditure limit for the Chief Executive Officer (for which provision has been made in Council's budget) will be for an unlimited amount.

In the event a quorum cannot be formed, then suspension will be by agreement of both the Lord Mayor and Chief Executive Officer.

6.5. Policy Review

All instruments of delegation shall be reviewed in the light of this policy and shall be further reviewed in the light of experience within one year after the election of each Council.

[Note: Appropriate consultation means consultation in accordance with Council's Consultation Framework.]

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76. Version Control and Change History

Version Number	Approval Date	Approved by	Amendment
1	28 February 2017	Council resolution	No amendments. Adopted in form presented to Council.
2	30 October 2019	Council resolution	Organisational realignment effective 11 November 2019





City of Melbourne Policy

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2 Title of Policy

This policy shall be known as the **Delegation Policy for Planning Applications**. It is a Local policy.

2.1 Background

Clarity around the decision making process and the ability for Officers and Councillors to refer planning applications to Future Melbourne Committee (FMC) or Council for decision making provides transparency whilst ensuring decision timeliness and quality.

2.2 Purpose

The purpose of this policy is to provide clarity around the procedure to identify those planning application which may be suitable for consideration by FMC and Council. This policy will:

- 2.2.1 Enable Councillors to concentrate on strategic direction and policy development.
- 2.2.2 Ensure efficient, consistent decision making.
- 2.2.3 Provide transparency of process.
- 2.2.4 Ensure Councillors, applicants and objectors are kept regularly informed about the planning process including those applications against which objections are lodged.
- 2.2.5 Enable adequate involvement by all stakeholders in decision making.

2.3 Scope

The policy applies to all planning applications within the City of Melbourne.

2.4 Policy

It is the policy of the City of Melbourne that the criteria to select planning applications to be decided by FMC include any application:

- 2.4.1 That is recommended to be approved and which:
 - 2.4.1.1 Raises an issue of significant public interest, concern or controversy or is likely to do so.
 - 2.4.1.2 Raises an issue of policy or process not covered by existing policy or practice.
 - 2.4.1.3 Has given rise to substantial public objection (denoted either by the qualitative strength of submission/s or there being a quantity of 16 or more non-identical submissions), or appears likely to do so.

- 2.4.1.4 Could set an undesirable precedent in terms of height, bulk, scale etc that could create an undesirable policy direction.
 - 2.4.1.5 Is innovative and raises the possibility of a new or unexpected desirable policy direction that Council wants to encourage.
 - 2.4.1.6 Provides for a development which is anticipated by, or contrary to, a proposed major amendment to the Melbourne Planning Scheme which is supported by Council.
 - 2.4.1.7 Proposes the demolition or significant redevelopment of an A or B graded or equivalent heritage building.
- 2.4.2 That is a Ministerial application related to development proposals with gross floor area exceeding 25,000sqm.
- 2.4.3 Which would be or could reasonably appear to be inconsistent with a previous decision or decisions by the Council.
- 2.4.4 Where the City of Melbourne is the applicant, with the exception of applications by the City of Melbourne for permits for subdivision or the creation, variation or removal of an easement(s) on Council owned land.
- 2.4.5 Where any Councillor has indicated a desire to call in the proposal for decision.

Where a delegate deems that an application falls within criteria 2.4.1–2.4.4 above, the delegate will refer it to FMC without requiring a Councillor to call the application in.

2.5 Procedure

This process is subject to:

- 2.5.1 All Councillors being notified of the number of objections to any application where the Council officer is recommending approval and of all recommended refusals, on a weekly basis.

2.5.2 A structured monitoring process to check that the purpose is being met, to record the implications of this Policy on the decision timeframe for applications, the number of items on the Committee agenda, the duration of Committee meetings, the reason for referral etc.

2.6 Emergency and/or extraordinary circumstances

As identified from time to time by resolution of Council, compliance with sections 2.2 to 2.5 of this policy will be suspended where emergency and/or extraordinary circumstances arise (such as a state emergency being declared).

2.5.2 In the event a quorum cannot be formed, then suspension will be by agreement of both the Lord Mayor and Chief Executive Officer.

2.6.7 Governance

Policy Owner	Director Planning and Building
Docs Number	7792353
Last Revised Date	29 October 2019
Next Review Date	17 March 2020

2.72.8 Document Approvals

Name	Title	Version	Date Approved	Signature

2.82.9 Version Control and Change History

Version Number	Approval Date	Approved by	Amendment
2	30 April 2013	Council resolution	Section 2.6: replaced 'and' with 'or' at end of criteria 7 and added new paragraph under criteria 8.
3	25 March 2014	Council resolution	Section 2.6: additions to criterion 3, insertion of two new criteria (8 and 9) and various editorial amendments made so policy complies with style guide.
4	28 February 2017	Council resolution	Bullet points changed to numbering under paragraph 2.2. Removal of paragraphs 2.4 (Definitions), 2.5 (Legislative context) and 2.8 (Supporting material). Additions/deletions to criteria in 2.4 and 2.5 (Procedure).
5	29 October 2019	Council resolution	Policy owner changed to the Director Planning and Building